

# ENFORCING FEAR

## Police abuse of sex workers when making arrests

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Together with other research (see *SA Crime Quarterly* No 15 2006), this Cape Town based study shows that the highest levels of violence against sex workers come from the police. Far from guaranteeing the rights of the accused, police officers' actions against sex workers when making an arrest are characterised by criminal activity including theft, assault and rape. Moreover, the minimum use of force is rarely applied when arresting sex workers. These findings reflect a worrying lack of respect for the basic human and constitutional rights of the most vulnerable in South African society.

The South African Constitution guarantees certain rights for those who are arrested, detained or accused of crimes. Since the end of apartheid the South African Police Service (SAPS) has committed itself to serving the community through policing that is "conducted in a manner that is consistent with human rights and democratic values".<sup>1</sup>

However, the Sex Worker Education and Advocacy Taskforce (SWEAT) has found that the police are engaging in unlawful and unconstitutional acts when arresting sex workers. The rights of sex workers who are arrested and detained are not upheld and in some cases members of the police engage in criminal actions themselves, while supposedly enforcing the law. Over a number of years, sex workers in Cape Town have notified SWEAT about such incidents. In addition to responding to these complaints individually, SWEAT analysed 48 statements received up to the end of 2004, to identify common kinds of abuse experienced at the hands of the police.

### 'Sex bribery', rape and indecent assault

One in three of the women who made statements to SWEAT described being forced to have sex with police officers or knew other sex workers who had been coerced. Women spoke of police officers that offered to release them from jail in return for sex:

There were three of us arrested and taken to the cells. One person was released, when we asked why, the officer indicated that the person who was released and the other police officer were having sex.

Another cop, I don't know his surname, but I know and will always remember his face, always tells me that he will not lock me up if I sleep with him.

Sometimes they ask for sexual favours in the cells (one policeman will come to the cell and choose who he would like to have sex with, so that he can free them all) and if that sex worker doesn't want to do that they all had to sleep there [in the police cell].

In addition to this type of coercion, sex workers also reported incidents of forced sex acts with police officers, either in exchange for not being arrested or during the process of being arrested:

He was actually sex bribing me so he won't lock me up...the cop ordered me to give him a fuck and to suck his colleague. He ask a condom and sex me doggie style while I suck his colleague's cock. I felt so shit after that...they left me sitting in front [of the police van] and they drop me at the Total garage...

Suddenly he grabbed me and kissed me on my mouth and touched me all over including my breasts, arms and buttocks. I tried to push him away but he still continued. I said to him please don't do this. In the mean time I noticed that he took his gun off and put it on the desk and he took a condom from his pocket and he has pulled my pants down. I told him when I do this I always get paid...I told him that even when your wife says no it's no and that I did not like what he was doing to me...he unzipped his pants and put on the condom. He made me sit on the desk and took off my panties and had sex with me. Afterwards he said he was sorry and that he liked African women like me. He took the condom off and I got dressed.

Two sex workers also described incidents of indecent assault by police officers. In legal terms indecent assault relates to the indecent handling of a person who is usually, but not always, a female, including touching the complainant's private parts, lifting up her dress, putting a hand up her dress, or caressing her breasts. A sex worker who was arrested describes a clear case of indecent assault by a police officer:

He pulled my jersey up to see if I had a belt on, touching me...when I asked him to stop he hit me on the back of my head and swore at me.

### Physical abuse during an arrest

One in two of the women who made a complaint to SWEAT spoke of being physically assaulted or sprayed with pepper spray by the police, either while being arrested or during detention. Assault is defined in South African law as the unlawful and intentional application of force to another person or the threat of force. Usually the application of force is of a direct nature – a slap, a punch or a kick.

Section 49 of the Criminal Procedure Act 51 of 1977 states that in the event that a suspect resists arrest or flees, the arresting officer may, "in order to effect the arrest use such force as may in the circumstances be reasonably necessary to overcome the resistance or prevent the person concerned from fleeing". However, there is also a recommendation, and indeed a legal requirement, that the police use the minimum amount of force required to effect an arrest. It is significant to note that in reality this is not the case and the minimum use of force is rarely applied in arresting sex workers.

Sex workers speak of various physical abuses when they are arrested by police officers, including being beaten or choked. In 13 of the 48 statements, sex workers complained of being sprayed with pepper spray. One describes her experience of being arrested as follows:

A white golf car with three SAPS police officers stopped. They told me to get out of the car and the client to go. After the client left they sprayed me with a spray gun, at the same time they were kicking me all over my body as I had fallen down at the time...the two were swearing saying: "*Jy wil nie hoer nie, jou jintoe, jou hoer, slegte goed.*" [You mustn't whore, you hooker, you whore, bad woman]. As I was trying to run they followed me with the golf, I felt that they wanted to knock me with the car with the intention of killing me, I thought they were planning to do a hit and run.

In this case the person involved was hospitalised for three days after the incident and the doctor on duty encouraged her to make a case against the

police. She decided not to follow this advice for fear of further abuse by the police, but she did come to SWEAT's offices to make a statement.

The standard police operating procedure for using pepper spray states that it should be used...

- if a suspect is resisting arrest;
- for self-protection when a police officer is attacked;
- for crowd management;
- inside cells if the safety of the police officer concerned is threatened.

Sex workers experiences are, however, very different. Statements revealed how police spray sex workers with pepper spray as they drive past and once they are confined inside the police van.

#### Verbal abuse

Racism is still an issue that confronts the SAPS.<sup>2</sup> Research has shown that police abuse disproportionately affects marginalised and vulnerable groups. A number of the women who made complaints spoke of racial slurs and reported that police officers called them "kaffir" or "swart poes" when speaking to them. One sex worker said the police were:

...calling us jintoes and telling us to "take our black pussies and sell them in Bellville".

Sixteen of the women who made complaints spoke of being verbally abused by members of the police. They talked of being called 'whores', 'jintoes', 'naaiers' or 'poes'. One woman spoke of her experience as follows:

*Hy het my lelik gevloek en gesê hy trap my poes in twee, sodat ek nie meer kan bloei nie...Hulle het my besonderhede gevra...toe ek sê ek het Std 9, toe sê hulle ek is ongeleerd dis waarom ek poes verkoop.*

[He swore at me and threatened to kick me in my 'pussy', until I couldn't bleed anymore....They asked for my details...when I said I had completed Std 9, they said I am uneducated and that is why I sell my 'pussy'].

#### Extortion

The dictionary definition of extortion is that it involves the use of one's official position to obtain a fee. Five sex workers complained that the police required them to pay bribes or very high fines for which they got no receipt. They also said police required sex workers' clients to pay fines and that they threatened to expose clients to their wives or families if they refused to pay the fine:

He told me the fine is R500 and if I take too long to get in [the police van] it will be R1,000.

If they caught you with a client, they want money from the client (saying it is his fine so that he can't be locked in or they will tell his family) and from the sex worker too...they don't ask the same amount all the time; it depends.

The police also threaten the clients (by saying they will tell their wives or lay a charge against them) they want R300 – R1,500.

#### Abuse of municipal by-laws

The majority of sex workers are targeted through the use of municipal by-laws, including those against loitering or loitering with the intent to commit prostitution. The offence of loitering is described in the Western Cape's municipal by-law as ensuring the convenience of persons using streets or public places as follows:

1. (1) No person shall in a street or public place –
  - (a) Run, walk, stand, sit or lie, or
  - (b) Deposit, leave, spill, drop or place any matter or thing as to obstruct or be likely to obstruct or cause or to be likely to cause inconvenience or danger to persons or other traffic using such street or public place.
- (2) Any person running, walking, standing, sitting or lying in a street or public place in the manner referred

to in subsection (1) shall forthwith cease to do so when so directed by a peace officer as defined in the Criminal Procedure Act 1977 (Act 51 of 1977).<sup>3</sup>

The by-law against loitering is in tension with constitutional rights guaranteeing freedom of movement and is often implemented in a way that restricts sex workers from even going about their ordinary activities as citizens (see related article in *SA Crime Quarterly* No 15 March 2006).

Other by-laws that are used to arrest sex workers are those relating to public nuisances. These include prohibitions against littering, excessive noise, use of abusive or threatening language, fighting or acting in a riotous or physically threatening manner, urinating, defecating, spitting or being nude in public or publicly performing any sexual act.

In SWEAT's experience, by-laws against obstructing traffic ("no person shall intentionally block or interfere with the safe or free passage of a pedestrian or vehicle") and the prohibition against carrying on trade on a national road, are also used to arrest sex workers. Committing an offence in terms of municipal by-laws can result in fining, imprisonment or alternative sentencing in a magistrates court.

#### **Cycle of arrests and unlawful arrests**

In reality, sex workers who are arrested are seldom charged under these by-laws and are generally not prosecuted. Women are often held for 48 hours and then released without seeing a magistrate or are fined arbitrary amounts. This cycle of arrest and release without being charged is contrary to the Notice of Rights given to arrested persons, which states that everyone has the right "to challenge the lawfulness of their detention in person before a court of law and to be released if such detention is unlawful". It is also a particularly malicious form of harassment.

Approximately half of the sex workers who made complaints to SWEAT spoke of such cycles of arrests. They described high levels of contact with

the police and frequent arrests, sometimes as often as four or five times a month. They also had concerns about the fact that despite these frequent arrests they were not charged or brought before a magistrate.

Ten sex workers reported being fined for contravening by-laws. The fines they received ranged from R50 to R500 and different fines were often given for exactly the same offence. This is a counter-productive strategy in terms of preventing people from continuing to do sex work, as arbitrary fines impact on sex workers' income and they often have to solicit more clients to pay the fines.

There were also complaints made by four sex workers about the length of time they were held in custody. According to the Bill of Rights, arrested, detained and accused persons have the right "to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest or at the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day".

One person spoke of being arrested by Cape Town's City Police and held for seven days with almost no food (two slices of bread per person per day). Others spoke of being:

...arrested for loitering and kept five days in the [name of place] police cells, with no hearing...we were released afterwards.

#### **Abuse of rights while in detention**

Persons engaged in sex work also spoke of various abuses of their rights while in detention. The Notice of Rights given to those who are detained by the police informs them that: "You have the right to be given the opportunity to communicate with, and be visited by, your spouse or partner, next-of-kin, religious counsellor and a medical practitioner of your choice."

A number of the women SWEAT works with are mothers who are responsible for taking care of their children. One in four of the women who made complaints indicated that they were refused the

right to make a phone call when in custody. The result of this is that they are held overnight or longer, but are not able to let their family know where they are or to make arrangements for the care of their children.

When detainees are informed of their rights they are told that: "You have the right to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate accommodation, nutrition, reading material and medical treatment at state expense". One in four sex workers who made complaints said they were not held in proper conditions, highlighting that they were kept in crowded, dirty cells, without being given adequate amounts of food or water:

If we are kept in the cells there is never enough food and we are told that 'kaffirs' must share porridge and the coffee.

We were kept in an overcrowded cell, with no toilet paper and no drinking water.

We were kept in the cell for a day, with no food the whole day. They released us without seeing the magistrate or being given a fine.

Two sex workers also spoke of being refused medication while they were in detention. In one case a sex worker who suffers from asthma asked for access to an asthma pump. The officer who arrested her refused to provide her with this potentially life-saving medication. Another sex worker who was detained with burn injuries on her foot spoke of being treated as follows while she was in detention:

I had third degree burns on my foot, for which I received treatment at the day hospital. I informed the arresting officer I was in pain and he joked that I should have my foot cut off. He refused to give me painkillers and indicated that the only painkiller he had was 'this' (patting his weapon).

Other sex workers also spoke of the theft of their property while they were held in detention. One person indicated that her jewellery was taken and never returned to her. Another woman reported that when she was arrested with R150 in her possession she only received R100 back.

### **Lack of police protection**

Stigma and social marginalisation play an important role in preventing certain groups from accessing police services and the legal system.<sup>4</sup> Given the levels of harassment by the police described above, it is also not surprising that mistrust of the police plays a role, as well as victims' fears that they won't be believed and that "the criminal justice system too may be biased against the group to which the victim belongs".<sup>5</sup>

In other research done by SWEAT in 2005, participants spoke of their fear of not being believed as well as their actual experiences of not being taken seriously when they reported violence to the police.<sup>6</sup> Sex workers who came to the SWEAT office to make complaints confirmed this view, with one reporting the following experience when trying to lay a complaint against the police:

When I complained to the captain about how I was hurt when they arrested me he said "*Ag dis maar net hoere en hy kan nie n saak van n prostituut aaneem nie.*" [Oh they are only whores and he can't take a case made by a prostitute.]

Persons engaged in sex work are often traumatised and humiliated by the treatment they receive from the police when they report having been raped.<sup>7</sup> Two sex workers reported to SWEAT that the police laughed at them when they tried to lay a charge. In one of these cases two women who tried to report a rape said police just laughed at them and refused to take their complaint:

And we reported it to the police, they just laughed at us...No. We were made to sit in the waiting room. And I just remember this girl saying she wants to speak to the detective and then he didn't want to help. So then she wanted to speak to the man in charge, he didn't help. So eventually we left

and went back to the agency, told the boss, but he wasn't interested.

### **Implications of the research**

#### *An effective criminal justice approach?*

SWEAT's experience has shown that in the past, the policing of the sex work industry largely took the form of reactions to isolated incidents based on community complaints. However by-laws are now being used for broader campaigns to 'clean up the streets' or 'remove crime and grime from our cities'. The policing of the industry seems unrelated to community complaints and by-laws are being proactively used to target and arrest sex workers to the extent that some sex workers speak of feeling 'hunted' by the police.

What is even more concerning is that these arrests are accompanied by increasing complaints of abuse and human rights infringements. It is questionable whether the frequent arrest of sex workers is an effective use of police resources. It is also important to consider the cost effectiveness and impact of local municipal policies that encourage clamping down on sex work and arresting sex workers.

#### *Police are the main threat to safety*

The work carried out by SWEAT indicates that the highest levels of violence against sex workers come from the police and law enforcement sectors. However there is little that these women can do given that sex work is illegal. According to sex workers, their strategies for coping with police violence often involve trying to avoid contact with the police by hiding or working at times when they think the police are less likely to be present.

This in turn means the women often work in remote, poorly lit areas where they are more vulnerable to forced unprotected sex with clients. Their fear of the police means that sex workers are unable to access the services of police for protection or even to report crimes that they may have witnessed.

Sex workers are seldom able to lay charges against violent police officers. In most cases this would

need to be done at the same police station where the perpetrator works which means risking encountering the offending party again. In our experience, sex workers do not want to risk exposing their identity and they are afraid of retaliation by police officers if they complain about police brutality.

#### *Alternate avenues for protection*

Their other recourse is to bring their complaints about police mistreatment to SWEAT. Although the organisation assists individual sex workers in laying complaints against police officers, this has not been a very successful strategy. In only one instance has the Independent Complaints Directorate taken up the case of a sex worker who was raped by a police officer. SWEAT's attempts to work with the SAPS' Internal Investigations Unit have also not resulted in the prosecution of police officers who mistreat or abuse sex workers.

In the interests of sex workers, SWEAT engages in a combination of strategies to deal with the problems described above and to reduce the harassment of sex workers. One of these strategies is to offer training to police officers who approach us or to attempt to mediate and negotiate on behalf of sex workers in community policing forums. SWEAT is also developing more confrontational strategies to challenge the incorrect use of by-laws to target sex workers and to address the abuse of sex workers.

#### *Basic and constitutional rights are disrespected*

The experiences that sex workers describe reflect a dehumanising lack of respect for basic human and constitutional rights. In many instances the actions ascribed to police officers constitute crimes, including theft, assault, indecent assault and rape. These actions not only threaten sex workers physically, but also put their children at risk when they are unable to make arrangements for their care. The psychological impact of repeated harassment and the denial of legal rights is devastating – reinforcing stigmatisation and discrimination.

It is this stigma and discrimination, coupled with the ongoing criminalisation of sex work, that

enables the abuse of law and of due process to which they are subject when sex workers come into contact with the criminal justice system.

#### Endnotes

- 1 See P Pigou, Monitoring police violence and torture in South Africa, paper presented at the International Seminar on Indicators and Diagnosis on Human Rights: The case of torture in Mexico, Mexican National Commission for Human Rights, Mexico, 2002.
- 2 G Newham and D Bruce, Racism, brutality and corruption are the key human rights challenges facing the transformation of the SAPS, 2000, retrieved March 2006 <<http://www.csvr.org.za/articles/artgnd2.htm>>
- 3 Western Cape Provincial Gazette, 9 June 1995, p 271.
- 4 J Nel, Hate crimes: A new category of vulnerable victims for a new South Africa, in L Davis and R Snyman (eds), *Victimology in South Africa*, Pretoria, Van Schaik, 2005.
- 5 Ibid, p 245.
- 6 N Fick, *Coping with stigma, discrimination and violence: Sex workers talk about their experiences*, Cape Town, Sex Worker Education and Advocacy Taskforce, 2005.
- 7 JM Wojcicki and J Malala, Condom use, power and HIV/AIDS risk: Sex workers bargain for survival in Hillbrow/Joubert Park/Berea, Johannesburg, *Social Science and Medicine*, 53, 2001, pp 99-121.